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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

FELIX MONTANO-FIGUEROA,

Defendant/Petitioner.

CASE NO. 08-CV-2042 BEN
(08-CR-0517)

ORDER DENYING CERTIFICATE
OF APPEALABILITY

Concurrently herewith, the Court entered judgment denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence ("Motion") under 28 U.S.C. § 2255. Effective December 1, 2009, this Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Rule 11 foll. 28 U.S.C. § 2255; 28 U.S.C. § 2253; Fed.R.App.P. 22(b). For the reasons set forth below, the Court **DENIES** certificate of appealability as to all claims asserted by Petitioner in his Motion.

A certificate of appealability ("COA") is authorized "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2). The applicant must meet the "substantial showing" standard with respect to each issue he or she seeks to raise on appeal. *Lambright v. Stewart*, 220 F.3d 1022, 1024 (9th Cir. 2000). "The issue of whether to grant a COA 'becomes somewhat more complicated where, as here, the district court dismisses the (claims) based on procedural grounds.'" *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000), quoting *Slack*

1 v. *McDaniel*, 529 U.S. 473, 484 (2000). In that situation, this Court “must decide whether ‘jurists of
2 reason would find it debatable whether the petition states a valid claim of the denial of a constitutional
3 right’” and “whether ‘jurists of reason would find it debatable whether the district court was correct
4 in its procedural ruling.’” *Id.*

5 In this case, the Court finds that reasonable jurists would not find it debatable that Petitioner
6 was denied a constitutional right or that the district court was not correct in its procedural ruling.
7 *Slack*, 529 U.S. at 484; *Lambright*, 220 F.3d at 1026. Accordingly, the Court hereby **DENIES**
8 certificate of appealability to all claims set forth in Petitioner’s Motion.

9 **IT IS SO ORDERED.**

10 Date: 7/15, 2010

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12 Hon. Roger T. Benitez
13 Judge, United States District Court
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